

Supplemental unemployment benefit trust. A trust established pursuant to a collective bargaining agreement between an association of employers and a labor union to compensate union members for anticipated lost wages because of the adoption of a new loading process in the shipping industry, with eligibility for benefits not limited to those union members suffering a loss of hours worked or wages, does not qualify for exemption under section 501(c)(17) of the Code.

'Advice has been requested whether the trust described below qualifies for exemption from Federal income tax under section 501(c)(17) of the Internal Revenue Code of 1954.

'The trust was established pursuant to a collective bargaining agreement between an association of employers and a labor union. The purpose of the trust is to compensate union members for anticipated lost wages because of the adoption of a new loading process in the shipping industry. By employing the new process, loading time per ton is reduced, resulting in a reduction of the number of working hours available to union members.

'Union members who worked 700 hours or more as stevedores in the previous calendar year are eligible for compensation benefits from the trust. Eligibility for benefits is not limited to those union members suffering a loss of hours worked or wages. The trust is funded by employer contributions of x cents for every ton of cargo loaded using the new process. The amount of compensation benefits to be distributed is determined by dividing the amount of employer contributions in the trust by the number of eligible union members. The trust pays the compensation benefits at the end of each calendar year to the eligible union members.

'Section 501(c)(17) of the Code provides for the exemption from Federal income tax of trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits.

'Section 501(c)(17)(D) of the Code defines the term 'supplemental unemployment compensation benefits' to mean benefits paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar condition, and sick and accident benefits subordinate to such benefits.

Section 1.501(c)(17)-1(a)(4) of the Income Tax Regulations states that the trust must be part of a plan which provides that the corpus and income of the trust cannot (before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to any purpose other than, the providing of

supplemental unemployment compensation benefits. Thus, if the plan provides for the payment of any benefits other than supplemental unemployment compensation benefits, the trust will not be entitled to exemption as an organization described in section 501(c)(17) of the Code.

'Section 1.501(c)(17)-1(b)(1) of the regulations defines the term 'supplemental unemployment compensation benefits' to mean benefits paid to an employee because of his involuntary separation from the employment of the employer whether or not such separation is temporary, but only when such separation is one resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar condition.

'Section 1.501(c)(17)-1(b)(4) of the regulations states that the term 'other similar conditions' includes, for example, involuntary separation from the employment of the employer resulting from cyclical, seasonal, or technological causes.

'Rev. Rul. 70-189, 1970-1 C.B. 134, holds that where a company establishes a supplemental unemployment benefit trust to pay benefits to employees who have lost income because of a reduction in the number of working hours, such payments will be treated as supplemental unemployment compensation benefits under section 501(c)(17) of the Code.

'The distributions made by the trust do not constitute supplemental unemployment compensation benefits since there is no showing that all union members receiving the benefits were involuntarily separated from employment or actually incurred a reduction in the number of hours worked because of the new loading process.

'Accordingly, the trust does not qualify for exemption from Federal income tax under section 501(c)(17) of the Code.